

# Trans-Lake Washington Project EIS Methodology Report – 6/10/02

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## Section 4(f)/ Section 6(f) Resources Evaluation

### Guiding Plans and Policies

- Federal law 23 USC Section 138, which is commonly known as Section 4(f) from its previous designation in the U.S. Department of Transportation (USDOT) Act of 1966 as 49 USC 1653 (f).
- FHWA Section 4(f) Policy Paper September 24, 1987 Revised June 7, 1989.
- Washington State Interagency Committee for Outdoor Recreation guidelines and U.S. Department of the Interior (National Park Service) policies as they pertain to Section 6(f) of the Land and Water Conservation Funds (LWCF) Act.
- WSDOT Environmental Procedures Manual, Section 455, July 2001.

### Overview

Section 4(f) prohibits FHWA and FTA from using land from a publicly owned park, recreation area, wildlife or waterfowl refuge, or historic site except if (1) there is no feasible and prudent alternative to the use of the land and (2) if the project includes all possible planning to minimize harm to the property. If a feasible and prudent alternative that avoids such use is available, it must be selected. If such use is unavoidable, then measures must be identified that minimize and mitigate for direct and indirect harm to the property.

Section 4(f) provides a mandate to make special efforts to “preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.” The special efforts include a Section 4(f) Evaluation, which entails a detailed description of affected resources, discussion of direct impacts (property acquisition or other means of obtaining property rights, such as easements or a temporary occupancy during construction) and proximity impacts on these resources from project alternatives, identification and evaluation of alternatives that avoid such impacts, and mitigation measures to minimize unavoidable adverse effects. Proximity impacts occur when the proposed project does not use land from a Section 4(f) property, but the project’s proximity impacts (such as effects of noise, access restrictions, or impacts on visual values of a park) are severe enough that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired according to 23 CFR 771.135(p)(2). Proximity impacts of this nature are referred to as a “constructive use.”

If federal funds granted through Section 6(f) of the U.S. Land and Water Conservation Funds Act (administered through the State Interagency Committee for Outdoor Recreation [IAC]) have been used to acquire or develop park facilities that would be converted to

nonrecreational use, all practical alternatives to the conversion must be evaluated. If no alternatives are practical, the U.S. Department of the Interior must approve replacement land of reasonably equivalent recreational utility and location, equal to or greater than the fair market value of property being converted to nonrecreational use, in compliance with National Park Service LWCF policies.

The Section 4(f) Evaluation will be an appendix to the EIS. Detailed discussions of alternatives in the EIS will not be repeated in the evaluation, but they will be referenced and summarized.

## Data Needs and Sources

The Section 4(f) Evaluation will be based on the findings of the following environmental analyses:

- Recreation section in the EIS for information on impacts on parks and other public recreational facilities.
- Cultural resources section of the EIS for information on impacts on archaeological sites, historic properties, and traditional cultural properties on, or determined to be eligible for, the National Register of Historic Places.
- Vegetation and Wildlife section of the Ecosystems section for information on impacts on designated wildlife or waterfowl refuges.
- Visual Quality section for information on visual elements that impair, diminish, or devalue public recreational facilities.
- Noise section for information on impacts near public recreational facilities.

The Section 4(f) team will work with each of the authors of these analyses to ensure that the relevant information will be collected, analyzed, and provided in a timely fashion.

## Proposed Coordination with Agencies

As noted in the methodology reports for the five environmental disciplines noted above, coordination will take place with the following agencies:

- Parks and recreation departments of the nine jurisdictions along the SR 520 corridor — from a Section 4(f) perspective, these agencies are referred to as the “local officials with jurisdiction.”
- IAC (as the administrator of the Section 6(f) funds) and the National Park Service (U.S. Department of the Interior) if Section 6(f) properties are impacted.
- State Historic Preservation Office (SHPO)
- Advisory Council on Historic Preservation (ACHP)
- Local historic preservation officers
- Affected Indian Tribes
- Owners/managers of wildlife or waterfowl refuges

- FHWA and FTA, as the federal lead agencies

## Proposed Coordination with Team, WSDOT, and Sound Transit

As noted above, the Section 4(f) team will work with each of the authors of the recreation, cultural resources, and vegetation and wildlife analyses to ensure that the relevant information will be collected, analyzed, and provided in a timely fashion. In addition, the Section 4(f) team will work with the design team to identify feasible avoidance alternatives for each Section 4(f) property.

Because the Section 4(f) Evaluation carries considerable legal importance, the analysis will be periodically reviewed with WSDOT, Sound Transit, FHWA, and FTA.

## Study Area

For the purposes of the Section 4(f) Resources Evaluation, the study area will be the same as the study area defined for the Recreation impact analysis, but will only include Section 4(f) Resources within that study area.

## Description of Section 4(f) Resources

The first substantive section of the Section 4(f) Evaluation is the description of the Section 4(f) properties. Relevant information from the three EIS sections noted above will be incorporated into the evaluation. Information presented will include maps showing the location and precise boundaries of the properties and the physical relationship of the build alternatives to the Section 4(f) resource, uses and existing and planned activities within the property, and access. Also presented will be specific information on the size, type, function, setting, and value of the property, as well as applicable clauses affecting property ownership (lease, easement, covenant, restriction, or condition) and unusual characteristics (flooding, terrain, or other features).

## Description of Impacts on Section 4(f) Resources

Impacts on Section 4(f) properties that have been identified in the recreation, cultural resources, and vegetation and wildlife sections of the EIS will be presented. Those impacts will include both direct (primarily property acquisition or the granting of an easement for long-term use or a temporary occupancy of the land during construction) and proximity impacts during construction and operation of the project. The proximity impacts, as reviewed by FTA and FHWA, will form the basis for the determination of whether a “constructive use” of the Section 4(f) resource has been created.

## Evaluation of Section 4(f) Resource Avoidance Alternatives

Section 4(f) requires that, if impacts to a Section 4(f) resource are anticipated, feasible and prudent avoidance alternatives need to be identified, evaluated, and, if determined to be feasible and prudent, selected for implementation. Section 6(f) has a similar requirement that all practicable alternatives to land conversion must be evaluated.

The Section 4(f) team will work with the project design team to identify feasible avoidance alternatives for each Section 4(f) property (it is assumed that many of the alternative variations and other design modifications that would avoid impacts have been integrated

during development of the alternatives). Each avoidance alternative will be subject to a test of feasibility and prudence; relevant factors that will be applied in that test will include:

- Unique engineering or construction problems
- Community disruption of extraordinary magnitude
- Extraordinary cost
- Severe adverse environmental, social, or economic impacts
- Failure to fulfill public needs
- Creation of greater impacts on this or other Section 4(f) resources
- Deterioration of property or prevention of development
- Other truly unusual factors

The Draft Section 4(f) Evaluation will include the discussion of the avoidance alternatives considered and analyzed in light of the test of feasibility and prudence.

If there are no feasible and prudent alternatives that avoid the use of Section 4(f) land, the final Section 4(f) Evaluation will explain why and include a conclusion that the selected preferred alternative is a feasible and prudent alternative with the least harm to the Section 4(f) resource after considering minimization and mitigation.

By going through the process of evaluating avoidance alternatives, and subsequently adopting other design modifications to minimize harm to the Section 4(f) resources, the Section 4(f) Evaluation will demonstrate that the selected preferred alternative includes all possible planning to minimize harm.

## Measures to Mitigate Harm

Based on the conclusions that there are no feasible and prudent avoidance alternatives and that all possible planning has been done to minimize harm, this section of the Section 4(f) Evaluation focuses on identifying measures to mitigate for unavoidable impacts. Feasible and acceptable measures will be incorporated from the recreation, cultural resources, and vegetation and wildlife sections of the EIS, and agreed upon in consultation with the project design team and the agencies noted in the *Proposed Coordination with Agencies* section above.

Mitigation for the conversion of Section 6(f)-funded property involves finding replacement land of reasonably equivalent recreational value, location, and utility. Coordination with IAC and the National Park Service (U.S. Department of Interior) will be required and documented to complete the land transfer.

## Record of Coordination

A Record of Coordination is a required section of the Section 4(f) Evaluation. This record will include a summary of all specific coordination and consultation activities (meetings, telephone conversations, and letters sent and received). Local officials with jurisdiction over affected Section 4(f) resources will be asked to provide official correspondence regarding the attributes and significance of the affected resource, agreement with the findings of the analysis, and the appropriateness of the proposed mitigation measure. Those letters will be contained within the Record of Coordination. Coordination and consultation with the U.S. Department of Interior, IAC, SHPO, ACHP, affected Tribes, and others will also be documented in the Record of Coordination.

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